IN THE HIGH COURT OF BOMBAY AT GOA
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LETTERS PATENT APPEAL NO. 2 OF 2004

Biku Sinai Usgaokar(deceased),
through his legal representatives:
a) Shri Prakash B. Usgaoker,
b) Smt. Mathura P. Usgaonker,
c) Smt. Nita V. Kaapurkar,
d) Shri Vijay D. Karapurkar,
alias Vijay B. Sukhtankar,
e) Shri Santosh B. Usgaoker,
f) Shri Shanta S. Usgaoker,
g) Shri Subash B. Usgaokar,
h) Smt.Pushpa S. Usgaoker,
all r/o Rajmahal Bldg.,
Mala, Panaji, Goa. ... Appellants.

Versus

1. Shri Vinaeca Xamba Dalvi,
since deceased, now represented
by His legal heirs:

a. Smt. Tarabai V. Dalvi,
b. Shri Shamba V. Dalvi,
c. Smt. Suman S. Dalvi,
d. Shri Manohar V. Dalvi,
e. Smt. Sunanda M. Dlvi,
f. Shri Diwakar V. Dalvi,
g. Smt. Sunita D. Dalvi,
h. Shri Gurudas V. Dalvi,
i. Smt. Neet G. Dalvi, all
r/o Pale, Usgao, Goa,
j. Smt. Pratibha Avinash
Sardessai, and
k. Avinash Sardessai,
both r/o Wadala, St. Cruz,
Bombay, Goa Standard
Batteries,
1. Smt. Jayanti Ramesh Mulgaonkar,
and her husband
m. Shri Ramesh Mulgaonker,
both r/o Assonora, Bardez, Goa,
2. Shri Anant Shamba Dalvi, r/o
Ambegal, Pale, via Ponda,
3. Shri Dattatraya Naguesh Dalvi,
r/o Ambegal via Ponda,
4. Vishnu Sadassiva Dalvi,
r/o Ambegal,
5. Manguesh Ramchandra Dalvi,
r/o Navelim, Sirvodem,
6. Mahadeo Shridhar Dalvi,
r/o Ambegal, Pale,
7. Heramb V. Dalvi, since

deceased, now represented by
his legal heirs:
a. SurdeshHeramb Dalvi,
b. Smt. Pranoti S. Dalvi,
both r/o Aquem Alto,
Margao,
c. Sufal Vithaldas Kunlokienkar,
d. Vithaldas Kunkolienkar,
both r/o St. Inez, Opp.
St. Inez, Church, Panaji,
Goa,
e. Supriya Pradeep Azrenkar and
her husband,
f. Pradeep Azrenkar, major,
both r/o Ansabhat, Mapusa,
Goa,
8. Prabhakar Shankar Dalvi,
r/o Upper Bazar, Ponda, Goa. ... Respondents.

Smt. A. A. Agni, advocate for the appellants.

Mr. S. S. Kantak, advocate for respondent nos.7(a) to 7(d).

CORAM : B. H. MARLAPALLE &
N. A. BRITTO, JJ.

DATE : 14th September, 2004.

ORAL JUDGMENT (Per Marlapalle, J.)

This Letters Patent Appeal arises from the Judgment dated 25th February, 2002 of this Court (Single Bench) in First Appeal No.86/96, which was filed under Section 54 of the Land Acqisition Act, 1894 ("the Act" for short), and not under Section 96 of the Civil Procedure Code.

2. As noted in the Order dated 23rd April, 2004, the issue regarding the maintainability of this Letters Patent Appeal was noted and the decision of the Full Bench was awaited. The Full Bench in the case of **Rahul Sharad Awasthi vs. Ratnakar Trimbak Pandit & Ors.**(2004 [3] Mh.L.J. 706) has already decided the issue regarding the maintainability of the

Letters Patent Appeal in view of the amended provision of Section 100-A of the Civil Procedure Code. The Full Bench in paragraph 37 specifically stated thus:-

> "We clarify that we are not concerned with the question whether section 100-A of the Code as substituted by the Amendment Act, 2002 is applicable to the appeal before the Division Bench against the Judgment and order of a Single Judge of the High Court in exercise of appellate jurisdiction under special statute and to that extent we do not express any opinion about the Full Bench decision of Andhra Pradesh High Court and the Division Bench decision of this Court in **Benoy V. Dembla.**"

In the case of **Sharada Devi vs. State of Bihar,** (AIR 2002 SC 1357), and Three Judge Bench held that under Section 54 of the Act there is no bar to the maintainability of a Letters Patent Appeal and observed thus:-

> "Section 26 of the said Act provides that every award shall be a decree and the statement of grounds of every award shall be judgment. By virtue of the Letters Patent "an appeal" against the judgment of a Single Judge of the High Court would lie to a Division Bench. Section 54 of the said Act does not exclude an Appeal under the Letters Pate The word 'only' occurring immediately after the non-obstante clause in Section 54 refers to the forum of appeal. In other words it provides that the appeal will be to the High Court and not any other Court e.g. the District Court. The term "as appeal" does not restrict it to only one Appeal in the High Court. The term "an appeal" would take within its sweep even a Letters Patent Appeal. The decision of the Division Bench rendered in a Letters Patent Appeal will then be subject to appeal to the Supreme Court. Read in any other manner there would be conflict between

> Section 54 and the provision of a Letters Patent. It is settled law that if there is a conflict, attempt should be made harmoniously construe the provisions."

In any case in the instant appeal the judgment appealed against has been rendered on 25th February, 2002 by this Court and thus prior to 1st July, 2002.

We therefore proceed on the basis that this Letters Patent Appeal is maintainable and examine the appeal on merits.

3. On 17th March, 1994, the Deputy Collector, South Sub-Division, Margao, made a reference under Section 13 of the Act to decide the entitlement to compensation in respect of the land admeasuring 2,379 sq. mts. acquired for the Ganjem-Bondla road. The said reference was between the present appellants and the respondent and it came to be registered as Land Acquisition Case no.12/75. On its re-registration it came to be numbered as L.A.C. No.128/81. The Reference Court by its Award dated 6th November, 1995, held that the present appellants were not entitled to claim any share in the compensation in respect of the subject land and the said compensation amount was directed to be distributed amongst the the respondents as per the respective shares shown in the Award. The said Award has been confirmed by this Court.

4. As per Section 11 of the Land Acquisition Act,

1894, the Collector is required to make an enquiry and pass an Award so as to pay the compensation, to every person interested in the land under acquisition. The term "person interested" has been defined under Section 3(b) of the Act and it includes all persons claiming an interest in compensation to be made on account of the acquisition of land under the Act and a person shall be deemed to be interest in the land if he is interested in an easement affecting the land. It was, therefore, necessary for the present appellants to prove their title as "persons interested" in the land which was the subject-matter of the acquisition. They could be persons interested by ownership, possession or right of easement. It was claimed by the appellants in their written statement that the land belonged to them, through one Shri Bicu Sinai Usgaoker, his brothers and his cousins. It was further contended by the appellants that the family of Dalvis i.e. the present respondents had no right to the said property surveyed under new survey nos.30/1and 31/1 situated at "Xeulem" or "Xeulem Tican". Both the sides had lead evidence. The respondents contended that the subject property belonged to the Comunidade of Ganjem and it was given as "aforamento" to one Mahadeu Suryarao Dessai and his family and from him it came to Tatoba Raghunath Dalvi (Exh.36). The possession was handed over to Tatoba Dalvi by the Civil Court at Bicholim and Exh.37 shows that the property was registered under no.14676 in the name of Ramabai Tatoba Dalvi. A certificate to that effect was brought on record at Exh.38. A.W.1, Heramb Dalvi

also had produced a record from the book of registration of survey at Village Ganjem at Exh.39 and in the said record old cadastral survey no.68 is shown in the name of Tatoba Dalvi, Balchandra Manguesh Dalvi and Shamba Raghoba Dalvi. The evidence on record also showed that the property under old cadastral survey no.69 had been granted on perpetual lease to Tatoba Raghunath Dalvi by Surya Sardessai and Narayan Surya Sardessai (Exh.40). The appellants had relied upon the documents at Exh.57, 58 and 59. The attorney of appellants witness Puranand K. S. Usgaoker, admitted before the trial Court that they had filed objection to the title of the present respondents and the said objection was rejected. Being aggrieved by the decision of the Awal Karkun an appeal to the Deputy Collector was presented and the same was allowed. However, the respondents had filed Second Appeal before the Collector and by allowing the said Appeal the Collector restored the order passed by the Awal Karkun. The appellant had filed a writ petition before this Court and it was dismissed as abated. Thus, the order passed by the collector received its finality. On the count of possession or taking care of the property when the appellants witness was cross-examined, he had stated that he used to go to the property, walk for a while on it and then come back. He admitted in the cross-examination that the property was registered in the Revenue Office in 1842 in the name of Narayan Surya Rao Dessai and the same was also confirmed from the registry with the Comunidade. The trial Court rejected

the claim that the property was leased to one Krishna Sinai Usgaoker in 1989. The list of documents was not produced on record.

5. The evidence as placed before the Reference Court was duly considered by this Court, including the issue regarding the boundaries of the subject property as stated by the appellants as well as the respondents. The appellants failed to prove their title to the property as being the interested persons. We re-appreciated the evidence only to find out whether the view taken by this Court (Single Bench) was apparently erroneous so as to call for correction and we are satisfied that the judgment dated 25th February, 2002, of the learned Single Judge does not suffer from any error apparent on the face of the record. The Letters Patent Appeal is mainly an intra-court appeal calling for corrections of errors apparent on the face of the record and there is no such case made out on the basis of the record in the instant appeal. Hence, the same must fail at the threshold.

6. Letters Patent Appeal is dismissed in limine.

B. H. MARLAPALLE, J.

N. A. BRITTO, J.